

2006

State of Utah v. Raymond Charles Marquez : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :

Plaintiff/Appellee, :

vs. :

RAYMOND CHARLES MARQUEZ, : Case No. 20060710-CA

Defendant/Appellant. :

BRIEF OF APPELLEE

Appeal From Convictions Based on Conditional Guilty Pleas to Unlawful Possession of a Controlled Substance (Methamphetamine), a Third Degree Felony, in Violation of Utah Code Ann. § 58-37-8(2)(a) (West 2004), and Possession of Paraphernalia in a Drug-Free Zone, a Class A Misdemeanor, in Violation of Utah Code Ann. §§ 58-37a-5 & 58-37-8(4) (West 2004), in the Seventh Judicial District Court, Carbon County, Utah, the Honorable Scott N. Johansen, Presiding

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :

Plaintiff/Appellee, :

vs. :

RAYMOND CHARLES MARQUEZ, : Case No. 20060710-CA

Defendant/Appellant. :

BRIEF OF APPELLEE

STATEMENT OF JURISDICTION

Defendant appeals his convictions based on conditional guilty pleas to unlawful possession of a controlled substance (methamphetamine), a third degree felony, in violation of Utah Code Ann. § 58-37-8(2)(a) (West 2004), and possession of paraphernalia in a drug-free zone, a class A misdemeanor, in violation of Utah Code Ann. §§ 58-37a-5 & 58-37-8(4) (West 2004). Jurisdiction exists pursuant to Utah Code Ann. § 78-2a-3(2)(e) (West 2004).

STATEMENT OF ISSUES AND STANDARDS OF APPELLATE REVIEW

Issue I. Was a weapons frisk of defendant justified, where he was discovered inside a home being legally searched for a wanted fugitive and the police reasonably suspected he was the fugitive or the fugitive's accomplice?

A trial court's factual findings underlying its determination of reasonable suspicion are reviewed for clear error; its application of law is reviewed for correctness. *See State v. Brake*, 2004 UT 95, ¶ 15, 103 P.3d 699.

Issue II. Was defendant's arrest justified when he admitted that drug paraphernalia was in his pocket and the paraphernalia was then seized?

A trial court's ultimate determination of probable cause is reviewed for correctness. *See State v. Griffith*, 2006 UT App 291, ¶ 5, 141 P.3d 602 (citing *Brake*, 2004 UT 95, ¶ 15).

STATUTES, RULES, AND CONSTITUTIONAL PROVISIONS

Defendant bases his challenge on the Fourth Amendment of the United States Constitution, which reads:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

Defendant was charged with unlawful possession and/or use of a controlled substance (methamphetamine) in a drug-free zone, a second degree felony, in violation of section 58-37-8(2)(a) & (4), and possession of paraphernalia in a drug-free zone, a class A misdemeanor, in violation of sections 58-37a-5 & 58-37-8(4) (R. 1).

Defendant moved to suppress the drugs and drug paraphernalia found on his person (R. 10-11). Following an evidentiary hearing, the trial court denied the motion (R. 17-20, 21-24, 27-28, 68). *See Addendum A* (Memorandum Decision Denying Motion to Suppress).

On July 3, 2006, defendant entered conditional guilty pleas to possession of methamphetamine, reduced to a third degree felony, and possession of drug paraphernalia, a class A misdemeanor (R. 44-51). On July 17, 2006, defendant was sentenced to zero-to-

five years imprisonment on the felony and a concurrent term of one year imprisonment on the misdemeanor, with both sentences concurrent to a third sentence of imprisonment in another case (R. 53). Defendant timely appealed (R. 57).

STATEMENT OF FACTS¹

Raymond Gerrish was running—running from the police and Adult Probation and Parole [AP & P]. He was wanted for two alleged crimes: absconding from AP & P’s supervision and felony drug possession (R. 73). *See Addendum B* (First Search Warrant & Affidavit). He needed to hide. He decided to go to Shawn Cloward’s place in Helper, Utah (id.). Cloward lived in a single-wide two-bedroom mobile home [house], but also had a camper-trailer [RV] on the property, which could provide a second place to hide (R. 73; R68: 7). Gerrish trusted others on the property to warn him if the wrong person approached. *Cf. Add. B*. He figured the set-up was perfect—well, at least, until January 29, 2005.

That day, the wrong person saw him. An unidentified confidential informer saw Gerrish several times on January 29th and each time Gerrish was attempting to conceal himself in Cloward’s house and RV (R. 73). The informant realized Gerrish was hiding from the police (id.). The informant immediately contacted the Helper City police, who also “received information that there are suspects acting as lookouts” on the property (id.). *See Add. B* (Affidavit).

¹The facts are recited in the “light most favorable to the trial court’s findings” and ultimate ruling. *State v. Hechtle*, 2004 UT App. 96, ¶ 2 n.1, 89 P.3d 185 (citation and quotation marks omitted).

The police immediately secured a search warrant for the house and RV (id.). Given Gerrish's fugitive status, his new felony charge, his intentional concealment, and the reported presence of lookouts/accomplices on the property, the police were concerned for their safety. Judicial permission was given for them to enter the property at night "for the safety of the officers" so that their movements would be less detectible (id.).² *See Add. B* (Affidavit).

That night, around 9:20 p.m., approximately ten officers from Helper City, Carbon County, and AP & P, approached Cloward's (R68: 4, 6, 12-13). The officers separated into two groups: one surrounded the house and the other surrounded the RV (R68: 6).

Officers Anderson and Wood approached the house (R68: 6, 23). Anderson knocked on the front door, yelled "police" several times, and demanded entry (R68: 6). No one responded (id.). With guns drawn, Officers Anderson, Wood, and three others entered the home (R68: 6, 26).

They immediately encountered three males and one female (R68: 6-7, 10). Officer Anderson recognized one of the males, Rick Cloward, who was seated on a couch in the living room (R68: 6-7, 15, 19). Anderson did not know the other two males or if either was Gerrish (id.). Officer Wood did not know any of the males or whether any of the them were Gerrish (R68: 27, 31).³ *See also Add. A* (Trial Court's Findings at R. 27).

²The trial court found that the search warrant was valid. *See Add. A*. Defendant does not challenge this ruling on appeal.

³Raymond or Ramon Gerrish is 5' 9", weighs 151 pounds, has hazel eyes and brown hair, and was born in 1982 (R. 73; R68: 6). *See Add. B* (Warrant & Affidavit). Defendant, Raymond Marquez, is 5' 8", weighs 160 pounds, has brown eyes and brown hair, and was born in 1967. *See* Fingerprint Sheet contained in Pleadings File, Case No. 20060710.

Wood immediately confronted one of the males, later identified as defendant, standing near the kitchen sink (R68: 23). In the initial seconds, Wood was not sure “what the situation was inside the house” and suspected that if defendant was the fugitive or an accomplice, he was likely armed with a knife or gun (R68: 27-28, 31). To protect himself and the other officers, Wood ordered defendant to the floor, handcuffed him, and frisked him for weapons (R68: 27-28, 31). In patting him down, Wood felt a hard bulge in defendant’s right front pocket (R68: 24, 28-29). Worried that the bulge might be a hypodermic needle that could poke him, Wood asked defendant what was in his pocket (R68: 24, 27). Defendant volunteered, “paraphernalia” (id.). Wood then reached into the pocket and removed a five-to-six inch long hypodermic needle and a metal spoon of about the same length (R68: 24-25). The spoon contained methamphetamine residue (R68:25).

Still suspecting that defendant was Gerrish or one of his accomplices, Wood asked him his name (R68: 27, 31-32).⁴ *See also Add. A* (Trial Court’s Findings at R. 27). Defendant responded, “Raymon Marquez,” which was later confirmed to be true (R68: 29, 31).⁵ Wood arrested defendant for possession of drug paraphernalia (R68: 33).

⁴The search warrant identified Gerrish as the fugitive and then referred to unnamed other suspects, who were acting as lookouts (R. 73). *See Add. B*. Wood testified he did know, at the time of the frisk who was who or “what the situation was in the house” (R68: 27, 31). The trial court found that at the time of the frisk, “it was not known whether [defendant] was the subject of the first search warrant” (R. 27). *See Add. A*. In context, the testimony and finding support that Wood did not know if defendant was Gerrish or one of Gerrish’s lookout/accomplices.

⁵Following defendant’s arrest, Officer Anderson searched defendant’s wallet, which presumptively contained identification (R68: 29-31).

While Officer Wood dealt with defendant in the kitchen, Officer Anderson simultaneously approached the third male, later identified as Gerrish, who was in the hallway (R68: 6-8, 14-15, 18, 31). Officers Wood and Anderson were in two different rooms and could not see what the other was doing (id.). Consequently, Wood did not know what transpired between Anderson and Gerrish in the bedroom until after Wood frisked and questioned defendant in the kitchen (id.). *See also Add. A* (Trial Court's Findings at R. 27).

When Anderson first observed Gerrish in the hallway, Gerrish and the female, later identified as Sylvia Marquez, were walking backwards, "back peddling, basically," towards the bedroom (R68: 6-7, 19). Sylvia was screaming and yelling (R68: 17, 19-20). As they reached the bedroom, Anderson could see methamphetamine pipes in plain view on a table next to the bed (R68: 7, 15, 18). He ordered the two to the ground, but only Gerrish complied (R68: 19-20). Sylvia just continued to yell (id.). For the moment, Anderson ignored her, turned to Gerrish, and asked him his name (R68: 19). Gerrish lied and said he was "Michael Anderson" (R68: 15, 19). Anderson did not know Gerrish by sight, but suspected this was a lie and again asked him who he was (id.). This time, Gerrish gave his true name (id.). Anderson picked Gerrish up off the floor, arrested him on the outstanding warrants, and handed him to another officer (R68: 19). Anderson's encounter with Gerrish lasted only five or so seconds (id.).

Anderson stayed in the bedroom (R68: 19-21). Now that he was done with Gerrish, he turned to Sylvia, who was "hysterical" and still screaming and refusing to lay on the ground (id.). Anderson felt her behavior was a threat to himself and the safety of the other

officers and handcuffed her (id.). No more than 30-40 seconds had passed since the police entered the home (id.).

In the same minute, other officers detained and handcuffed Cloward in the living room where a marijuana bong was in plain view (R68: 6-7, 14-15, 20-21, 23, 31-32; R. 74).

In detaining the home's occupants, the officers observed drugs and drug paraphernalia in plain view "all over the house," with the exception of the kitchen (id.). An officer left to obtain a second search warrant to search the home for additional drugs and evidence of drug sales (R68: 7, 15, 31; R. 74). *See Addendum C* (Second Search Warrant & Affidavit). Cloward and Sylvia were detained pending the arrival of the second search warrant (R68: 8-9, 12). Gerrish and defendant were placed in police vehicles for transport to jail (R68: 13, 19, 32-33). Five minutes had passed since the police entered the home (R68: 33).

SUMMARY OF ARGUMENT

Defendant claims that the facts do not support a reasonable suspicion that he was armed and dangerous and, therefore, the frisk for weapons violated the Fourth Amendment. Defendant further argues that the evidence which flowed from the allegedly illegal frisk, that is, the admission that he possessed drug paraphernalia and the paraphernalia itself, must be suppressed. If suppressed, defendant asserts there is no evidence to support his arrest.

While the outcome of this case turns on the legality of the weapons frisk, the legality of the frisk depends on the facts. Here, however, defendant has not properly marshaled the facts supporting the legality of the frisk and the denial of his motion to suppress. Consequently, defendant's arguments should be summarily rejected.

Alternatively, even if the merits are considered, reasonable suspicion supports the frisk. The police faced a dangerous situation in arresting a wanted fugitive in a private home, where the fugitive was reported to have accomplices. In the initial minute following their entry into the home, the police reasonably suspected that defendant could be the fugitive or his accomplice. Given this reasonable suspicion, it was also reasonable for them to suspect that he was armed and dangerous and, consequently, to frisk him for weapons to ensure their safety. Because the weapons frisk was lawful, defendant's admission that the bulge in his pocket was drug paraphernalia supports his arrest. The ultimate seizure of the paraphernalia occurred incident to that arrest. In sum, the trial court properly denied the motion to suppress.

ARGUMENT

POINT I

REASONABLE SUSPICION SUPPORTED A WEAPONS FRISK OF DEFENDANT WHERE THE POLICE LAWFULLY ENTERED A PRIVATE RESIDENCE TO ARREST A WANTED FUGITIVE AND SUSPECTED THAT DEFENDANT WAS THE FUGITIVE OR HIS ACCOMPLICE

Defendant asserts that no reasonable suspicion supports the weapons frisk. *See Brief of Appellant [Br.Aplt.]* at 7-11. According to defendant, “[n]either the search warrant nor the arrest warrant, including the underlying crime for which a warrant was issued, indicate that Mr. Gerrish [the subject of the search warrant] was a violent individual or that there was an inherent or specific risk of violence to the officers charged with executing the search warrant.” *Br.Aplt.* at 10. Additionally, defendant claims he was a “compliant visitor,” who

presented no threat to the officers once he was handcuffed. *Br.Aplt.* at 11. Consequently, defendant argues the frisk was illegal.

Defendant's arguments ignore the facts of this case and findings of the trial court. Because defendant fails to properly marshal the record facts, his claim of illegality should be summarily rejected. *See United Park City Mines Co. v. Stichting Mayflower Mountain Fonds*, 2006 UT 35, ¶ 27, 140 P.3d 1200 (warning of "grim consequences" when an appellant does not marshal). Alternatively, even if the merits are considered, the totality of facts known to Officer Wood at the time of the frisk support a reasonable suspicion that defendant was armed and dangerous.

(1) Defendant Fails to Properly Marshal the Facts in Support of the Frisk.

Whether a weapons frisk is lawful is "highly fact dependent." *State v. Brake*, 2004 UT 95, ¶ 2, 103 P.3d 699. Because the inquiry is fact-dependent, defendant is obligated to marshal every "scrap of competent evidence" in support of the trial court's findings and conclusion before he may attack their validity. *Chen v. Stewart*, 2004 UT 82, ¶¶ 76-78, 100 P.3d 1177. This requires defendant to "play the devil's advocate" and "temporarily remove [his] own prejudices and fully embrace the [prosecutor's] position." *Id.* at ¶ 78 (internal quotation marks and citation omitted). He also must present "the evidence in a light most favorable to the trial court . . . and not attempt to construe the evidence in a light favorable to [his own] case" or "merely restate or review evidence that points to an alternate finding or a finding contrary to the trial court's finding of fact." *Id.* (citations omitted). Defendant must "demonstrate how the court found the facts from the evidence and then explain why

those findings contradict the clear weight of the evidence.” *Id.* (internal quotation marks and citation omitted). *Accord United Park City Mines*, 2006 UT 35, ¶¶ 25-27. In sum, to meet the marshaling requirement, defendant must “ferret out the fatal flaw” in the evidence accepted by the trial court. *West Valley City v. Majestic Inv. Co.*, 818 P.2d 1311, 1315 (Utah App. 1991). Here, defendant has failed to do so and this Court should, therefore, refuse to consider the merits of his claims. *See United Park City Mines*, 2006 UT 35, ¶ 27.

For example, defendant asserts that the police faced no inherent danger in arresting Gerrish and no specific threats from defendant. *See Br.Aplt.* at 7-11. To support these claims, defendant states that the search warrant “did not allege that Raymon Gerrish was trafficking in large amounts of illegal substances or that he was violent or dangerous.” *Br.Aplt.* at 5. Gerrish was simply wanted for felony drug possession. *Id.* Defendant further states that Officer Wood did not suspect defendant of any crime or of being armed or dangerous. *Br.Aplt.* at 6. These statements do not fairly reflect the record or adequately marshal the facts.

When properly marshaled, the facts establish that Gerrish was not simply wanted for drug possession. He was wanted on a new felony drug possession offense *and* for absconding from AP & P’s supervision in connection with a prior conviction (R. 73). A neutral magistrate determined that there was probable cause to believe that Gerrish was actively concealing himself from the police and that there was reason to believe that other individuals were helping him (*id.*). Aware of the dangers the police faced in trying to arrest Gerrish, the police received judicial authorization to approach Cloward’s property under

cover of darkness “for the safety of the officers” (id.). *See Add. B* (Affidavit). The fair inference from these facts is that Gerrish, a wanted fugitive hiding from the police, was likely to flee or fight if the police attempted to arrest him and that others on the property might aid him. These facts alone establish the inherent dangerousness the police faced in executing the search warrant.

But additional facts, again ignored by defendant, establish that the danger the officers faced escalated once they entered Cloward’s home.

Defendant fails to acknowledge that when the police loudly knocked on Cloward’s door, announced their presence several times, and demanded entry, no one responded.

Compare Statement of Facts, supra, with Br.Aplt. at 5-6. When the police finally entered, they found four people only feet from the door in the single-wide mobile home (R68: 6-7, 10, 15, 19, 23). Two of the people, Gerrish and Sylvia, were actually “back-peddling” away from the police and towards a bedroom with drug paraphernalia in plain view (R68: 6-7, 18-19). Sylvia was hysterical, screaming, and not following police orders (id.). Cloward was in the living room where drug paraphernalia was in plain view (R68: 6-7, 15, 19). Defendant was in the kitchen, where no drugs were visible (R68: 23). Thus, at best five police and AP & P officers were faced with controlling four suspects, one of whom was hysterical and three of whom were male, located in three different rooms in a single-wide mobile home, when it was still possible that others were hidden in the home or in the nearby RV trailer, and when during the initial minute, it was unclear who was the fugitive and if any accomplices were present. *See Statement of Facts, supra.* Moreover, based on the fact that the no one inside

responded when the police loudly demanded entry, it was reasonable to suspect that the occupants deliberately positioned themselves throughout the mobile home to better secure weapons, destroy drugs, escape, or simply undermine police control of them. *See Muehler v. Mena*, 544 U.S. 93, 98-100 (2005); *Michigan v. Summers*, 452 U.S. 692, 702-705 (1981) (recognizing the dangerousness of executing search warrants in homes where multiple persons are on the premises).

Defendant also does not fully recite Officer Wood's expressed concern that defendant was armed and dangerous. *See Br.Aplt.* at 6. Wood testified that when he confronted defendant, he did not know "what the situation was in the house" (R68: 27-28, 31). Under cross-examination, Wood conceded that defendant followed his command to lay on the floor and did not overtly threaten him, but also testified that he believed that defendant could still threaten his safety even if handcuffed (*id.*). *See United States v. Sanders*, 994 F.2d 200, 209-10 (5th Cir. 1993) (recognizing the limited effectiveness of handcuffs in ensuring the safety of officers); *People v. Thurman*, 209 Cal.App.3d 817, 823 (Cal. App. 1989) (recognizing that even when a suspect's posture at a given moment is nonthreatening, this "does not in any measure diminish the potential for sudden armed violence" created by the surrounding circumstances). Most significantly, defendant fails to acknowledge—much less marshal—the most salient fact testified to by Officer Wood and accepted by the trial court: That at the time of the frisk, the police had not eliminated defendant as the fugitive or an accomplice (*id.*). *See Add. A* (Trial Court Findings at R. 27). This fact alone fully supports a reasonable suspicion that defendant was armed and dangerous. *See footnotes 3 & 4, supra*

Finally, defendant is correct that the mere presence of drugs and/or drug paraphernalia in a home does not necessarily raise a suspicion that the occupants are armed or dangerous. *See Br.Aplt.* at 6-7. But here the facts are not so limited. The drugs and paraphernalia in this case were in plain view “all over the house,” with the exception of the kitchen (R68: 7, 15, 31; R.74). *See Add. C.* Anyone in the mobile home would have been aware of this open use of drugs. Moreover, when the police entered, Gerrish was not hiding as he had earlier when the confidential informant was on the property; instead, he was freely walking in defendant’s presence. Coupled with the allegation that persons on the property were lookouts, these facts and their reasonable inferences support a reasonable suspicion that defendant was not a mere casual visitor, but was in concert with Gerrish and the others in their criminal endeavors.

In sum, this Court should refuse to consider the merits of defendant’s challenge to the validity of the frisk because he has failed to properly marshal the facts.

(2) Alternatively, Reasonable Suspicion Supports that Defendant Was Armed and Dangerous.

In executing a search warrant, the police may lawfully detain, handcuff, and question those found on the premises. *See Muehler*, 544 U.S. at 98-100; *Summers*, 452 U.S. at 702-705 (in combination, holding that the police may secure premises to be searched by detaining, handcuffing, and questioning those on the premises at the time of the search). On appeal, defendant does not challenge his detention or questioning.

Instead, defendant argues only that he could not be frisked. *See Br.Aplt.* at 7-11. Defendant’s attack is three-fold. He claims that: (1) arresting a wanted fugitive inside a home is not inherently dangerous; (2) no facts support that he was armed or dangerous; and

(3) even if reasonable suspicion exists, any dangerousness was negated once he was handcuffed. *See id.* Defendant's claims are without merit based on the facts of this case.

It is well-accepted that a police officer may frisk (pat down the outer clothing) an individual that the officer is "investigating at close range" and suspects is armed and dangerous. *Terry v. Ohio*, 392 U.S. 1, 24 (1968) (as applied to persons being investigated on the street). *See also Ybarra v. Illinois*, 444 U.S. 85, 93 (1979) (as applied to persons in places being searched).⁶

The suspicion, of course, must be reasonable, meaning that it must be "supported by 'specific and articulable facts and rational inferences'" and not amount to a mere "inchoate and unparticularized suspicion or hunch." *State v. Markland*, 2005 UT 26, ¶ 10, 112 P.3d 507 (quoting respectively *United States v. Werking*, 915 F.2d 1404, 1407 (10th Cir. 1990), and *Terry*, 392 U.S. at 27). At the same time, it "need not rule out the possibility of innocent conduct." *Markland*, 2005 UT 26, ¶ 10 (quoting *United States v. Arvizu*, 534 U.S. 266, 273 (2002)). Moreover, the decision to frisk should not be judged in hindsight, but evaluated in light of the facts "available to the officer at the moment" of the frisk. *Terry*, 392 U.S. at 21-22.

The test is objective. *Id.* "An action is 'reasonable' under the Fourth Amendment, regardless of the individual [officer's] state of mind, 'as long as the circumstances, viewed

⁶In *Ybarra*, 444 U.S. at 93-94, the Court recognized that persons on searched premises may be frisked if reasonable suspicion supports that they are armed and dangerous or otherwise connected to the illegal activity being investigated. The Court held, however, that it was unlawful to frisk the patrons in the public bar where there was no basis to connect them to the illegal activities of the bartender. *Id.*

objectively justify the action.’ . . . The officers’ subjective motivation is irrelevant.” *Brigham City v. Stuart*, 126 S. Ct. 1943, 1948 (2006). *Accord Markland*, 2005 UT 26, ¶ 11 (citing *State v. Warren*, 2003 UT 36, ¶ 14, 78 P.3d 590 [*Warren II*]). Consequently, the issue is not one of emotion (whether a specific officer “feared” the suspect), but one of reason (whether a “man of reasonable caution” would have a basis to suspect that the suspect was armed and dangerous). *See id.* Reasonable suspicion does not demand that an officer wait for an “overt act of hostility” before frisking a suspect. *Thurman*, 209 Cal.App.3d at 823. Rather, the purpose of a *Terry* frisk is to disarm suspects before an actual threat of harm occurs. *Cf. Brigham City*, 126 S. Ct. at 1949 (recognizing in a different context that the reasonableness requirement of the Fourth Amendment does not require an officer to wait for a blow to be struck: “The role of a peace officer includes preventing violence and restoring order”).

As previously discussed, the facts, when properly marshaled, fully support the dangerousness of the situation the officers faced in entering the home to find and arrest Gerrish. *See Subsection (1), supra*. Nevertheless, defendant argues that the court improperly relied solely on the inherent dangerousness of the situation and did not properly require an individual suspicion of defendant’s dangerousness. *See Br.Aplt.* at 7-11. The trial court, however, did not rely solely on the inherent dangerousness of the situation to justify the frisk. Instead, the court upheld the frisk because “[a]t the time defendant was detained [and

frisked], it was not known whether he was the subject of the first search warrant” (R. 27).⁷

See Add. A.

Defendant does not acknowledge the court’s finding that defendant was still a suspect at the time of the frisk . *See Subsection (1), supra.* Consequently, he establishes no fatal error in the finding.

Instead, citing *State v. Warren*, 37 P.3d 270 (Utah App. 2001) [*Warren I*], defendant argues that Officer Wood must be subjectively afraid for reasonable suspicion to exist. *See Br.Aplt.* at 9. But *Warren I*’s reliance on subjective analysis was rejected in *Warren II*. *Warren II* held that an objective standard governs the assessment of reasonable suspicion, although an officer’s evaluation of the situation, based on his training and experience, may support the objective reasonableness of the frisk:

The totality of the circumstances analysis objectively evaluates all facts before the officer at the officer made the decision [to frisk]. The officer, with experience and training, is in the best position to evaluate the circumstances and determine the reasonableness of a *Terry* frisk. We recognized that some

⁷Some courts have recognized that individuals present during a search of home may be frisked based on no more than the inherent dangerousness of the situation. *See Rivera v. United States*, 928 F.2d 592, 606-07 (2d Cir. 1991); *Dashiell v. State*, 821 A.2d 372, 380-86 (Md. App. 2003) (both upholding protective frisks of persons present during a search for drugs and evidence of drug sales). *See also* 3 Wayne R. LaFave, *Search and Seizure* § 4.9(d) at 710-19 (2004) (discussing judicial split over whether particularized reasonable suspicion is always necessary for a frisk conducted during a lawful search of premises). That issue need not be decided here, however, because neither the trial court below nor the State on appeal relies solely on the inherent dangerousness of the search to justify the frisk. Instead, the trial court found and the State asserts that it was reasonable to suspect that a fugitive, who is actively hiding with the assistance of lookouts, is armed and dangerous. Under the circumstances here, it was also reasonable to suspect that defendant was the fugitive or an accomplice. *See Statement of Facts, supra.* Consequently, it was reasonable to suspect that defendant was armed and dangerous.

officers may never admit that they feared for their safety. . . . Likewise, other officers may always claim they believed a stop was dangerous in order to justify a frisk. Nevertheless, an officer's own evaluation of the circumstances may provide valuable insight to factor into the objective analysis. How much weight this factor is given is a determination for the individual court, though a *Terry* frisk cannot be validated or invalidated based solely on a subjective belief because no one factor alone is determinative of reasonableness.

See Warren II, 2003 UT 36, ¶ 21. The United States and Utah Supreme Courts have since reaffirmed that an objective standard governs reasonable suspicion.⁸ *See Brigham City*, 126 S. Ct. at 1948; *Markland*, 2005 UT 26, ¶ 11.

Defendant's reliance on *State v. Valdez*, 2003 UT App 100, 68 P.3d 1052, is also misplaced. In *Valdez*, this Court held that the police could lawfully detain but not question Valdez, where he was asleep in an arrestee's home when the arrestee was arrested, but Valdez was not otherwise suspected of a crime and did not present a threat to the officers. *Id.* at ¶¶ 2-4 & 20-21. Here, entirely different facts exist. At the time of the frisk, the search for the fugitive was not complete, defendant was still under suspicion, and the scene was not secure. Therefore, the dangerousness of the situation had not dissipated. *See Statement of Facts, supra*. Moreover, *Valdez*'s holding that a lawfully detained suspect may not be questioned while detained is of doubtful validity in light of the United States Supreme

⁸Additionally, though ultimately irrelevant, defendant's assertion that Officer Wood did not fear defendant is factually incorrect. Officer Wood did not discuss his subjective emotions. He simply agreed that defendant complied with his orders and did not overtly threaten him (R68: 30-31). At the same time, he testified that he did not know what "the situation was inside the house" and did not know what role defendant or the others played in the search (R68: 27-31).

Court's subsequent holding that such questioning is constitutionally permissible. *See Muehler*, 544 U.S. at 98-100.

Finally, defendant claims—without supporting authority—that the fact that he was handcuffed diminished any reasonable suspicion that he was dangerous. *See Br.Aplt.* at 11. But as Officer Wood testified, handcuffing did not negate the possibility that defendant was still dangerous (R68: 27-28). Indeed, it is widely-recognized that the effectiveness of handcuffs is limited:

Handcuffs are a temporary restraining device; they limit but do not eliminate a person's ability to perform various acts. They obviously do not impair a person's ability to use his legs and feet, whether to walk, run, or kick. Handcuffs do limit a person's ability to use his hands and arms, but the degree of the effectiveness of handcuffs in this role depends on a variety of factors, including the handcuffed person's size, strength, bone and joint structure, flexibility, and tolerance to pain. Albeit difficult, it is by no means impossible for a handcuffed person to obtain and use a weapon concealed on his person or within lunge reach, and in so doing to cause injury to his intended victim, to a bystander, or even to himself. Finally, like any mechanical device, handcuffs can and do fail on occasion.

United States v. Sanders, 994 F.2d 200, 209 (5th Cir. 1993).

In sum, when the totality of the facts are considered in the light most favorable to the trial court's ruling, they establish reasonable suspicion to support the search. *See State v. Peterson*, 2005 UT 17, ¶¶ 3 & 6, 110 P.3d 699 (distinguishing between a permissible protective pat-down of a person on the searched premises, and an impermissible subsequent search of the suspect's coat brought to him by the police); *State v. Banks*, 720 P.2d 1380, 1382-83 (Utah 1986) (distinguishing between a permissible protective pat-down of persons present during a search and a subsequent full body search requiring probable cause).

POINT II

DEFENDANT'S ADMISSION THAT DRUG PARAPHERNALIA WAS IN HIS POCKET SUPPORTS HIS ARREST FOR POSSESSION OF PARAPHERNALIA

After Officer Wood felt a hard object in defendant's pocket during the weapons frisk, he asked defendant what it was. Defendant volunteered that it was drug paraphernalia. The officer then reached in and removed a hypodermic needle and metal spoon containing methamphetamine residue. *See Statement of Facts, supra.*

Below, the trial court addressed whether the hard object in defendant's pocket could be seized (R. 28). In doing so, the court assumed the frisk was legal and seemed to focus on whether the seizure would be justified even if the object did not appear to be a weapon or contraband (*id.*). *See Add. A. See also Minnesota v. Dickerson*, 508 U.S. 366 (1993) (addressing limits of plain touch doctrine). On appeal, defendant does not challenge this ruling.

Instead, he argues only that if the frisk is determined to be illegal, any evidence derived from the frisk must also be suppressed. *See Br.Aplt.* at 11-12. Here the derivative evidence is defendant's admission that he possessed paraphernalia and the paraphernalia itself.

The State agrees that if the frisk was illegal, any evidence derived from the frisk must be suppressed. But as argued in Subsection (2), *supra*, no illegality occurred here. Consequently, the fruit-of-the-poisonous tree doctrine is inapplicable. Instead, as the trial court found, defendant's admission that he possessed paraphernalia established probable

cause for his arrest (R. 28). The seizure of the paraphernalia occurred incident to that arrest. *See State v. Chansamone*, 2003 UT App 107, ¶ 11, 69 P.3d 293.

CONCLUSION

For the foregoing reasons, the State respectfully requests that the Court affirm the denial of defendant's motion to suppress and, as a result, his convictions.

ORAL ARGUMENT REQUESTED

The State requests oral argument. "[O]ral argument is a tool for assisting the appellate court in its decision making process," *Perez-Llamas v. Utah Court of Appeals*, 2005 UT 18, ¶ 10, 110 P.3d 706, and "the only opportunity for a dialogue between the litigant and the bench." *Moles v. Regents of University of California*, 654 P.2d 740, 743 (Cal. 1982). In this case, the decisional process would be significantly aided by oral argument. *See* Utah R. App. P. 29(a)(3).

Respectfully submitted this 17th day of January, 2007.

MARK L. SHURTLEFF
Attorney General



CHRISTINE F. SOLTIS
Assistant Attorney General
Counsel for Appellee

CERTIFICATE OF SERVICE

I hereby certify that four true and accurate copies of the foregoing brief of Plaintiff/Appellee were delivered by [] hand [☒] mail to SAMUEL S. BAILEY, 220 East 200 South, Price, Utah 84501, this 17th day of January, 2007.

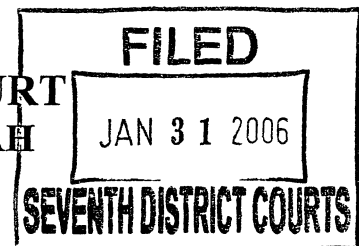


Christine F. Soltis
Assistant Attorney General

Addenda

Addendum A

**SEVENTH JUDICIAL DISTRICT COURT
FOR CARBON COUNTY, STATE OF UTAH**



STATE OF UTAH,

Plaintiff

vs.

RAYMOND MARQUEZ,

Defendant

MEMORANDUM DECISION

Criminal No. 051700158

Defendant moved to suppress certain evidence in this matter on September 29, 2005. Memoranda of Points and Authorities have been submitted by defense counsel and by the County Attorney, and a suppression hearing was conducted November 16, 2005. The Court, having reviewed the hearing, and the memoranda, now finds as follows:

Law enforcement entered a home pursuant to a search warrant on January 29, 2005. No evidence has been provided to indicate that the search warrant was invalid, and the Court finds it to be a valid search warrant.

Immediately upon entry into the home, officers saw drug paraphernalia in plain view from a position where the officer had the right to be. They secured the residence for officers' safety and to preserve evidence and immediately sent officers to get another search warrant. Defendant and others were lawfully detained, patted down and cuffed while the first search warrant was being executed and the second search warrant was being sought. At the time defendant was detained, it was not known whether he was the subject of the first search warrant.


When defendant was patted down for officer safety, officer felt a bulge in his pocket. The officer was justified in patting down the defendant, and also justified in inquiring as to what the

bulge in the pocket was. Defendant volunteered that it was paraphernalia. The officers then had probable cause to remove the contents of the pocket for officer safety and to preserve evidence. The pocket yielded a needle, which could be used as a weapon against the officer, particularly if it was infected with a communicable disease.

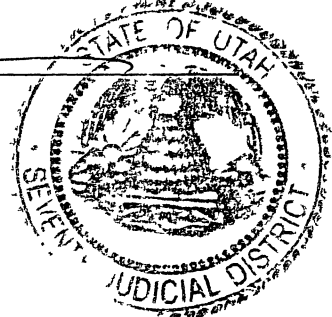
Even if the officer safety did not justify the search of the pocket, defendant's statement that the pocket contained illegal contraband provided the officer with probable cause to perform the search and to continue detainment and arrest. Upon arrest the contraband would have been inevitably discovered either by a search incident to arrest, or a later inventory search. It is therefore clear that the officer had probable cause to search defendant's pocket.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED: That the defendant's suppression motion is denied and the contents of the defendant's pocket are admissible at trial.

Dated this 30th day of January, 2006



Scott N. Johansen
District Court Judge

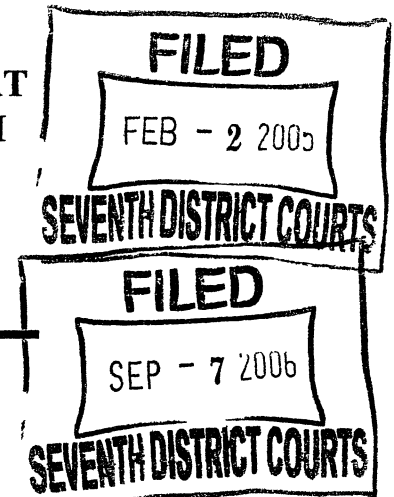


Addendum B

●HELPER MUNICIPAL JUSTICE COURT
●CARBON COUNTY, STATE OF UTAH

●SEARCH WARRANT

#2



- TO ANY PEACE OFFICER IN THE STATE OF UTAH:
- Proof by affidavit under oath having been made this day before me by: S. TRENT ANDERSON, I am satisfied that there is probable cause to believe that:

- **On the premise(s) of:**

70 west 9th North, Helper, Utah, House is a single wide mobile home, two bedroom, front room, kitchen, and one bathroom. Home has one enclosed porch which is attached to the single wide mobile home on the north west corner of the home, with one detached shed located on the north side of the home. The single wide mobile home is gray in color with the front door facing to the West. One dirt driveway on the west side of the home with entrance from the south side of the home which is accessed from 900 North. A check of utilities with Helper City shows the utilities in the name of Shawn Cloward as of 01/29/2005.,

- **In the vehicle(s) parked at the above residence described as:**

1991 Toyota Tercel: White, UTAH 221MWU, VIN# JT2EL43B7M0016504, 2 door passenger vehicle,

1 late model Motor Home with cab over, yellow in color with two brown stripes parked on the south side of main residence (70 West 9th North).

- In the City of HELPER, County of CARBON, State of UTAH, there is now being possessed or concealed certain property (Wanted Person) or evidence described as:

Subject Raymon Robert Gerrish, DOB 09/25/1982, SS# 528396642, 5'9", 151 lbs, Hazel eyes, Brown hair, Utah Driver's License Number 168871424

- Which property (Wanted Person) or evidence:

Raymon Robert Gerrish, DOB 09/25/1982, SS# 528396642, 5'9", 151 lbs, Hazel eyes, Brown hair, Utah Driver's License Number 168871424: Wanted for Third Degree Felony Possession/Use of Controlled Substance - State of Utah, Department of Corrections, Adult Probation and Parole - Fugitive.

● **YOU ARE THEREFORE COMMANDED**

At anytime, day or night *SM*

To make a search of the above named or described person(s), premise(s) and vehicle(s) for the herein above described person, property or evidence, and if you find the same, or any part thereof, to bring it forthwith before me at the, County of CARBON, State of UTAH, or retain such property in your custody subject to the order of this court.

● **SUBSCRIBED AND SWORN TO BEFORE ME**

This

29

day of

January



IN THE HELPER MUNICIPAL JUSTICE COURT,
IN AND FOR CARBON COUNTY
STATE OF UTAH

SERVED:

Date: 01/29/05

Time: 2:24 hrs

By: S. Trust Anderson

**HELPER MUNICIPAL JUSTICE COURT
CARBON COUNTY, STATE OF UTAH**

The undersigned being first duly sworn, deposes and says:

That the AFFIANT has reason to believe that:

That on the premise(s) known as:

70 west 9th North, Helper, Utah: House is a single wide mobile home, two bedroom, front room, kitchen, and one bathroom. Home has one enclosed porch which is attached to the single wide mobile home on the north west corner of the home, with one detached shed located on the north side of the home. The single wide mobile home is gray in color with the front door facing to the West. One dirt driveway on the west side of the home with entrance to the driveway from the south side of the home which is accessed from 900 North. A check of utilities with Helper City shows the utilities in the name of Shawn Cloward as of 01/29/2005.

That in the vehicle(s) parked at the above residence described as:

1991, Toyota, Tercel, White, UTAH 221MWU, VIN# JT2EL43B7M0016504, 2 door passenger vehicle

1 late model Motor Home with cab over, yellow in color with two brown stripes

In the City of HELPER, County of CARBON, State of UTAH, there is now certain property (Wanted Person) or evidence described as:

- Subject Raymon Robert Gerrish, DOB 09/25/1982, SS# 528396642, 5'9", 151 lbs, Hazel eyes, Brown hair, Utah Driver's License Number 168871424
- The facts establishing the grounds for issuance of a search warrant are:
- Your AFFIANT, Officer S. Trent Anderson is a Police Officer with the Helper City Police Department and has been employed as a Police Officer for the past five years. Your AFFIANT is currently assigned to the patrol division. Your AFFIANT graduated from the Utah Police Officer Standards and Training Academy in January of 2000. Your AFFIANT has attended the following in-service training classes which involves hundreds of hours: High Intensity Drug Trafficking Area Drug Interdiction, Stolen Vehicle Apprehension, Sexual Assault Investigations, Instructor Development, Incident Response to Terrorist Bombings, Hazardous Materials Awareness, and Introduction to basic drug intelligence and analysis.
- Subject Raymon Robert Gerrish, DOB 09/25/1982, SS# 528-39-6642, 5'9", 151 lbs, Hazel eyes, Brown hair, Utah Driver's License Number 168871424. On 01/29/05, CI contacted our agency and advised that CI observed Raymon Gerrish several times on 01/29/05 attempting to conceal himself at 70 West 9th North in Helper, Utah and in the motor home. Utah Statewide warrants show an active warrant for the arrest of Raymon Robert Gerrish in the amount of \$5,000.00 issued by the 7th District Court in Price, Utah, warrant # 981124276 - OTN 15665474. State of Utah, Department of Corrections also has

Raymon R. Gerrish listed as a FUGITIVE with their agency.

- Further grounds for issuance of a search warrant are attached hereto and incorporated herein.

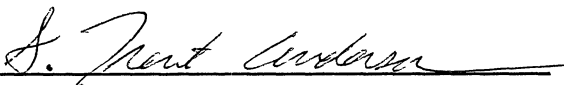
Your AFFIANT has personally contacted the State of Utah, Department of Corrections, Adult Probation and Parole - Agent Jeff Wood and confirmed that subject Raymon R. Gerrish is still and active Fugitive with their agency. Your AFFIANT has also personally checked the State of Utah, statewide warrants, and confirmed an active warrant for subject Raymon R. Gerrish. Your AFFIANT has personal knowledge of this residence and personal knowledge that Shawn Cloward is the owner of the residence. Your AFFIANT further personally checked the residence and observed the description and vehicle's at the residence.

- WHEREFORE, the AFFIANT prays that the search warrant be issued for the seizure of said items at any time day or night due to the following reasons:

- It is currently nighttime, and there is a need to serve the warrant before daylight for Officer Safety reasons.. Your AFFIANT has received information relating to 70 West 9th North in Helper, Utah with illegal drug activity. The warrant for Raymon R. Gerrish has been issued for Illegal Possession/Use of Controlled Substance - Felony 3. Subject Raymon R. Gerrish is also listed by the State of Utah, Department of Corrections as a FUGITIVE. It has been your AFFIANTS experience that persons using and or distributing illegal controlled substances pose a higher threat of safety to Law Enforcement therefore by allowing Law Enforcement night time entry into the home or vehicles aids in greater degree of cover and the safety to all officers involved in order to effect a lawful and safe arrest.

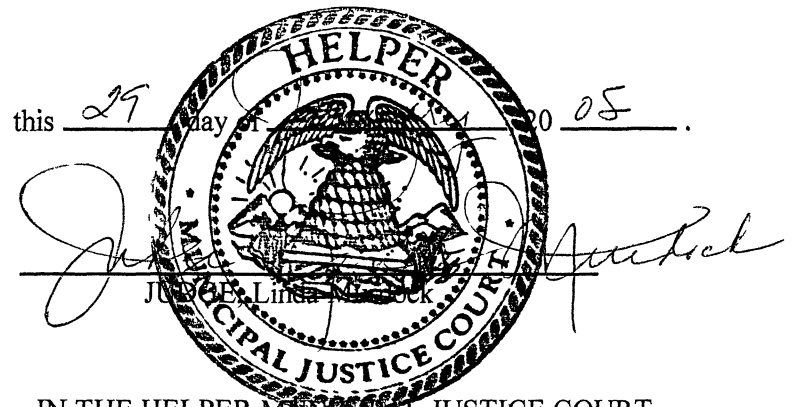
- Your AFFIANT has received information that there are suspects acting as lookouts at this location and for the safety of officers, a nighttime approach is needed. Presently, the two referenced vehicles are parked at the above residence. The CI told AFFIANT that CI saw Gerrish at both the residence and motor home on 01/29/2005. Officers making entry to the residence would be easily seen by the occupants of this motor home.

- This affidavit was reviewed by ATTORNEY GENE STRATE of the CARBON COUNTY ATTORNEY'S OFFICE.



AFFIANT, Officer S. Trent Anderson

- SUBSCRIBED AND SWORN TO BEFORE ME this



IN THE HELPER MUNICIPAL JUSTICE COURT,
IN AND FOR CARBON COUNTY
STATE OF UTAH

Addendum C

●HELPER MUNICIPAL JUSTICE COURT
●CARBON COUNTY, STATE OF UTAH

●SEARCH WARRANT #3



- TO ANY PEACE OFFICER IN THE STATE OF UTAH:

- Proof by affidavit under oath having been made this day before me by: S. TRENT ANDERSON, I am satisfied that there is probable cause to believe that:

- On the premise(s) of:

70 west 9th North, Helper, Utah: House is a single wide mobile home, two bedroom, front room, kitchen, and one bathroom. Home has one enclosed porch which is attached to the single wide mobile home on the north west corner of the home, with one detached shed located on the north side of the home. The single wide mobile home is gray in color with the front door facing to the West. One dirt driveway on the west side of the home with entrance to the driveway from the south side of the home which is accessed from 900 North. A check of utilities with Helper City shows the utilities in the name of Shawn Cloward as of 01/29/2005.

- In the vehicle(s) parked at the residence described as:

1972 Eldorado Motor Corporation, Model: Ecoline, Style: Motorized Home, White in color, bearing UTAH 744MWV (which license plate is registered in the State of Utah to a different vehicle), VIN# E34GHM00675, registered in the State of Utah to: Paul A. Pearson with a registered address of 899 North 750 West #459 Price, Utah.

- In the City of HELPER, County of CARBON, State of UTAH, there is now being possessed or concealed certain property or evidence described as:

- MARIJUANA, a green leafy substance in dried form.
 - Materials used to package marijuana, specifically, plastic sandwich bags.
 - Materials for using marijuana:
 - 1.Cigarette papers, small sheets of flammable paper with adhesive on one side,
 - 2.Pipes, used to smoke marijuana,
 - 3.Roach clips, used to hold a marijuana cigarette while being smoked.
 - Personal notes, records or narcotic transactions, listing names, dates, amounts sold.
- METHAMPHETAMINE, a yellowish white powdery substance.
 - Materials for packaging methamphetamine, specifically small plastic baggies.
 - Materials for using methamphetamine, including hollow tubes for snorting

methamphetamine, small spoons for snorting methamphetamine, mirrors for holding methamphetamine while being snorted, razor blades for cutting methamphetamine into lines,

- Scales for weighing methamphetamine.
- Cut, substance used to dilute the methamphetamine.
- SUSPECTED CONTROLLED SUBSTANCE

• Which property or evidence:

- Was unlawfully acquired or is unlawfully possessed.
- Is evidence of illegal conduct.

• **YOU ARE THEREFORE COMMANDED**

• At anytime, day or night

- To make a search of the above named or described person(s), premise(s) and vehicle(s) for the herein above described person, property or evidence, and if you find the same, or any part thereof, to bring it forthwith before me at the, County of CARBON, State of UTAH, or retain such property in your custody subject to the order of this court.

SUBSCRIBED AND SWORN TO BEFORE ME

this

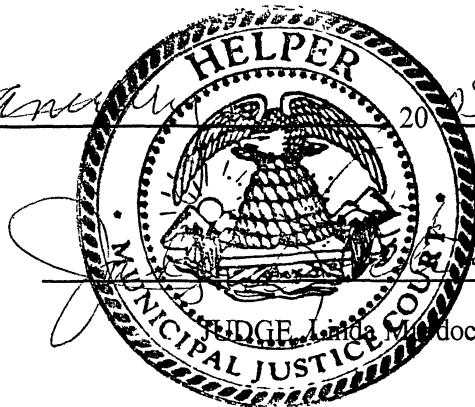
29

day of

January

20

05



SERVED:

DATE:

01/29/05

Time:

2318 hrs

By:

St. Trent Under

HELPER MUNICIPAL JUSTICE COURT
CARBON COUNTY, STATE OF UTAH

The undersigned being first duly sworn, deposes and says:

That the AFFIANT has reason to believe that:

That on the premise(s) known as:

70 west 9th North, Helper, Utah: House is a single wide mobile home, two bedroom, front room, kitchen, and one bathroom. Home has one enclosed porch which is attached to the single wide mobile home on the north west corner of the home, with one detached shed located on the north side of the home. The single wide mobile home is gray in color with the front door facing to the West. One dirt driveway on the west side of the home with entrance to the driveway from the south side of the home which is accessed from 900 North. A check of utilities with Helper City shows the utilities in the name of Shawn Cloward as of 01/29/2005.

That in the vehicle(s) parked at the residence described as:

1972 Eldorado Motor Corporation, Model: Ecoline, Style: Motorized Home, White in color, bearing UTAH 744MWV (which license plate is registered in the State of Utah to a different vehicle), VIN# E34GHM00675, registered in the State of Utah to: Paul A. Pearson with a registered address of 899 North 750 West #459 Price, Utah.

In the City of HELPER, County of CARBON, State of UTAH, there is now certain property or evidence described as:

- MARIJUANA, a green leafy substance in dried form.
- - Materials used to package marijuana, specifically, plastic sandwich bags.
 - Materials for using marijuana:
 1. Cigarette papers, small sheets of flammable paper with adhesive on one side,
 2. Pipes, used to smoke marijuana,
 3. Roach clips, used to hold a marijuana cigarette while being smoked.
 - Personal notes, records or narcotic transactions, listing names, dates, amounts sold.
- METHAMPHETAMINE, a yellowish white powdery substance.
- - Materials for packaging methamphetamine, specifically small plastic baggies.
 - Materials for using methamphetamine, including hollow tubes for snorting methamphetamine, small spoons for snorting methamphetamine, mirrors for holding methamphetamine while being snorted, razor blades for cutting methamphetamine into lines,
- - Scales for weighing methamphetamine.
 - Cut, substance used to dilute the methamphetamine.
- SUSPECTED CONTROLLED SUBSTANCE
- That said property or evidence:
 - Was unlawfully acquired or is unlawfully possessed.
 - Is evidence of illegal conduct.

- The facts establishing the grounds for issuance of a search warrant are:

Your AFFIANT, Officer S. Trent Anderson is a Police Officer with the Helper City Police Department and has been employed as a Police Officer for the past five years. Your AFFIANT is currently assigned to the patrol division. Your AFFIANT graduated from the Utah Police Officer Standards and Training Academy in January of 2000. Your AFFIANT has attended the following in-service training classes which involves hundreds of hours: High Intensity Drug Trafficking Area Drug Interdiction, Stolen Vehicle Apprehension, Sexual Assault Investigations, Instructor Development, Incident Response to Terrorist Bombings, Hazardous Materials Awareness, and Introduction to basic drug intelligence and analysis.

On 01/29/05 at approx. 2124 hours, The Helper City Police Department served a search warrant on 70 West 9th North in Helper, Utah for a wanted person. Officers from Helper City, Carbon County Sheriff's Office, and Adult Probation and Parole assisted in the search warrant. Upon executing the search warrant, wanted person (Raymon R. Gerrish) was located and placed under arrest for an active statewide warrant in the amount of \$5,000.00 in which he was also listed as a fugitive by Adult Probation and Parole. While securing the residence, I observed in plain view (north bedroom) two suspected methamphetamine pipes and observed on suspected marijuana bong (front room floor). Two hypodermic needles, two bags of small clear plastic bags, and one spoon with suspected methamphetamine residue were located on suspect Raymon Gerrish. One hypodermic needle and one spoon with suspected methamphetamine residue was located on Raymond C. Marquez. Suspected drug paraphernalia and suspected methamphetamine residue was located (plain view) in the residence upon executing the search warrant. In your AFFIANTS experience, illegal drug paraphernalia and controlled substance can and have been stored in vehicles.

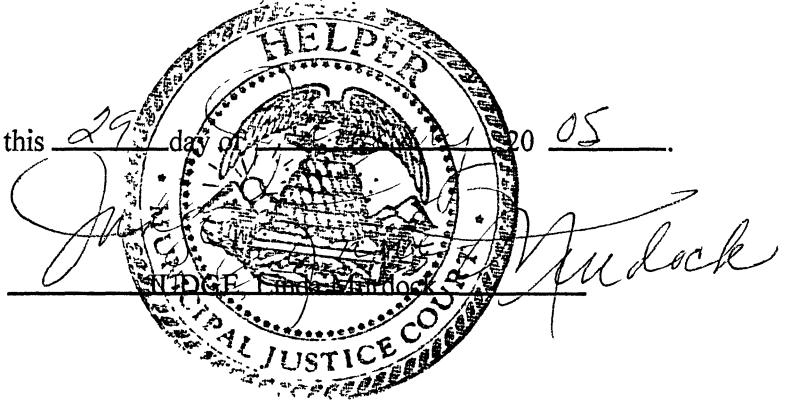
WHEREFORE, the AFFIANT prays that the search warrant be issued for the seizure of said items at any time day or night due to the following reasons:

- It is currently nighttime, and there is a need to serve the warrant before daylight to secure important evidence in this case that may provide immediate information to further your AFFIANTS investigation during the night. On 01/29/05 at approx. 2124 hrs., Helper City Police Department, along with the Carbon County Sheriff's Office and Adult Probation and Parole executed a search warrant at 70 West 9th North for a wanted person. While executing the search warrant, suspected drug paraphernalia and suspected methamphetamine residue was located in plain view in the north bedroom and front room of the residence. Other suspected drug paraphernalia was also located on one Raymond Marquez and one Raymon Gerrish. At this time, we wish to continue without delay in searching for additional controlled substances and/or drug paraphernalia.
- This affidavit was reviewed by ATTORNEY GENE STRATE of the CARBON COUNTY ATTORNEY'S OFFICE.

S. Trent Anderson

AFFIANT S. Trent Anderson

SUBSCRIBED AND SWORN TO BEFORE ME this 29 day of SEP 2005.



IN THE HELPER MUNICIPAL JUSTICE COURT,
IN AND FOR CARBON COUNTY
STATE OF UTAH